

GREG LUBISCH,)	No. C 13-05045 EJD (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND; DENYING
v.)	MOTION FOR SERVICE OF
)	COMPLAINT; DENYING MOTION
)	FOR TRIAL
CITY AND COUNTY OF SAN)	
FRANCISCO,)	
)	
Defendants.)	
)	(Docket Nos. 2 & 12)

Order of Dismissal with Leave to Amend
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1 Court has no choice but to dismiss the complaint with leave to amend.¹

2 Plaintiff's motion for service of the complaint, (Docket No. 2), and motion
3 for trial, (Docket No. 12), are DENIED as premature.

4 Plaintiff is advised that to state a claim under 42 U.S.C. § 1983, a plaintiff
5 must allege two essential elements: (1) that a right secured by the Constitution or
6 laws of the United States was violated, and (2) that the alleged violation was
7 committed by a person acting under the color of state law. See West v. Atkins, 487
8 U.S. 42, 48 (1988). Plaintiff must identify defendants by name and state how each
9 individual defendant violated a specific federal right.

10 CONCLUSION

11 For the foregoing reasons, the Court orders as follows:

12 The complaint is DISMISSED with leave to amend. Within **twenty-eight**
13 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint.
14 The amended complaint must include the caption and civil case number used in this
15 order and the words "AMENDED COMPLAINT" on the first page and write in the
16 case number for this action, Case No. C 13-05045 EJD (PR). If using the court form
17 complaint, Plaintiff must answer all the questions on the form in order for the action
18 to proceed.

19 **Failure to respond in accordance with this order by filing an amended**
20 **complaint will result in the dismissal of this action without prejudice and**
21 **without further notice to Plaintiff.**

22 The Clerk shall include two copies of the court's complaint with a copy of
23 this order to Plaintiff.

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27 ¹Exhaustion is mandatory and no longer left to the discretion of the district
28 court. Woodford v. Ngo, 548 U.S. 81, 84 (2006) (citing Booth v. Churner, 532 U.S.
731, 739 (2001)).

This order terminates Docket Nos. 2 and 12.

DATED: 4/9/2014


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GREG LUBISCH,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO,

Defendants.

Case Number: CV13-05045 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/10/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Greg Lubisch J-12674079
Hall of Justice
850 Bryant Street, 7th Floor
San Francisco, CA 94103

Dated: 4/10/2014

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk